

(Appellate Jurisdiction)

BETWEEN: VOCOR HARRES
PAUL HARRES
TIWOK SOLTA

Appellants

AND: OBED TOTO

Respondent

Coram: Mr Justice Oliver A Saksak
William Lory - Clerk

The Appellants are present not represented.
The Respondent is present not represented.

JUDGEMENT

This is a appeal from the Senior Magistrate's Court against the judgment of the Learned Senior Magistrate dated 27th April, 1995.

The Appellants speak through Mr Kalmer Vocor as their spokesman. The Respondent spoke for himself.

The grounds for the appeal as for as Vocor and Paul Harres are concerned seem to me to be that the Learned Senior Magistrate erred in law in not taking into consideration their defence as to ownership of land on which the fence they destroyed was erected.

As regards Tiwok Solta it seems to me that his ground of appeal is that the Learned Senior Magistrate erred in law is not allowing him to call evidence to prove that the cattle that did the damage was not his.

Mr Vocor speaking for Vocor Harres and Paul Harres say the village Court has already determined the land boundary of the land in question and hes declared it to be family Vocor's Land. He submits that as their land, the Respodnent had not right in the first place to erect the fence. He submits these two defendant/Appellants did what they did in an act of defence to preserve Vocor family property.

Tiwok Solta tells the Court that he had two witnesses to call to give evidence that the cattle which did the damage to Obed Toto's garden the 3rd time was not theirs. The witnesses are Kuvu and James.

It seems clear to me from the Judgement of the Leaved Senior Magistrate that he did not take into account the issue of ownership of land when he determined the issue of damage. It was an

essential issue which he had first to decide before deciding the issue of compensation. The basis for this view is Article 73 of the Constitution:-

"All land in the Republic of Vanuatu belongs to the indigenous custom-owners and their descendants"

Land is life to the people of Vanuatu. Where someone claims ownership as a defence, the Courts have a duty to pay attention to Article 73 of the Constitution and to accept that as a good defence. The person who relies on the defence has to prove to the court that the land is his in order for the defence to be accepted.

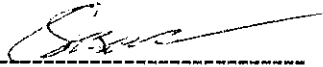
Here the Magistrate should have allowed the Appellants to prove that the land is theirs by evidence.

For these reasons I Order and Direct as follows:-

- (1) The Orders of the Learned Senior Magistrate dated 27th April 1995 are stayed until further order of the court.
- (2) There shall be a re-hearing in the Senior Magistrates' Court at a date to be fixed by the Registry.

LUGANVILLE this 26th August, 1998.

BY THE COURT



OLIVER A SAKSAK
Judge of the Supreme Court

